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APR 16 1902
JAMES H. McKENNEY,
Clerk.

Brf. of Lamar for D. E.

Filed April 16, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1901.

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JAMES TARRANCE, WILL SMITH, AMOS CLARK, JUDSON MOORE, CHARLES ROBINSON, DAVE POWELL, MARSHAL BOYD, AND W. C. GREEN, ALIAS NEWT GREEN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF FLORIDA, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

W. B. LAMAR,
Attorney General of Florida
and for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 2823

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ARGUMENT.

(1.) The first motion filed in this case in the circuit court in the State of Florida was to quash the venire drawn for the term, and the panels of grand and petit jurors. The motion was not well made. The petit jury so objected to could not have tried defendants below (plaintiffs in error here) for the reason that their term of service would expire before defendants' case was called for trial.

(2.) The motion to quash the panel of the grand jurors was not well made or taken.

An indictment had been found against defendants below (plaintiffs here).

A plea in abatement of the indictment was the only proper remedy. This is the uniform practice in the courts in the State of Florida. This ruling upon a question of judicial procedure in a State by the highest State courts will not be interfered with by this court. Such ruling is binding upon this court. This is the uniform ruling of this court.

(3.) The ruling of the circuit court below was correct in denying the challenges to the array of the special venires for petit jurors.

No evidence was adduced in support of the facts asserted in such challenges.

And, besides, the written challenges were not verified by affidavit.

From the opinion of the supreme court of Florida the following quotation is submitted:

"It was not claimed upon the oral argument, nor is it claimed in the briefs, that the laws of this State prescribing the qualifications of jurors, and regulating the manner of selecting, summoning, and empaneling them, discriminate against any person or class of persons on account of race, color, or previous condition of servitude. Nor can such claim be successfully asserted. They disqualify no person or class of persons from jury service because of race, color, or previous condition of servitude, nor do they authorize any discrimination on this account to be made by those whose duty it is to enforce the regulations prescribed for selecting, summoning, and empaneling. If, therefore, the defendants

have been denied the rights claimed by them under the Fourteenth Amendment of the Constitution of the United States, it has been done, not in obedience to the requirements of our jury laws of which the courts take judicial notice, but by the improper conduct of those engaged in administering those laws. This improper conduct must be brought to the attention of the court by proper proceedings, and the allegations of those proceedings must be sustained by competent evidence, as the court cannot take judicial notice of such misconduct where it does not appear by the record in the case. The presumption is that those charged with administering the laws have properly discharged their duty and against any misconduct on their part, until the contrary is made to appear."

The judgment of the supreme court of Florida should be affirmed.

W. B. LAMAR,
Attorney General of Florida
and for Defendant in Error.